advanced by counsel for the complainant does not commend itself to me.

Now, if the complainant succeeds in this appeal, then the court would have to order that the Bar Council – the executive arm of the Malaysian Bar – do refer the complaint to the Chief Justice for a formal inquiry under the Act. In such a situation, the Malaysian Bar would be directly affected by the order made by this court and unless it is made a party it could, perhaps, thumb its nose at such order. I would, at this point, interpolate to mention by way of explanation, that whilst the Bar Council is by definition the central council of the Malaysian Bar, established under s 47 of the Act, it is a purely executive body charged with the responsibility of the proper management of the affairs of the Malaysian Bar and for the proper performance of its functions and not therefore a legal entity. Accordingly, it is *not* the Bar Council but the Malaysian Bar which must be made a respondent to the present appeal.

I note, in passing, and without placing undue stress on the point, that s 93 of the Singapore Legal Profession Act (Cap 161, 1985 Ed) is generally in pari materia with s 103 of the Act and that the practice there would appear to be to make the Law Society of Singapore (equivalent to the Malaysian Bar here) a party to the appeal to the High Court brought by a dissatisfied complainant. (See for example the case of *P Suppiah* v *The Law Society of Singapore*[2]). In my view, therefore, having regard to the provisions of s 103 of the Act, the Bar Council must be served with each of the documents referred to and the Malaysian Bar made a respondent. As in this case the latter requirement was not satisfied, the next question which arises is whether I am empowered to give the complainant leave to amend the originating summons by adding the Malaysian Bar as a respondent. I note that under s 103(1) of the Act, the complainant has 14 days from date of receipt of the Bar Council's decision within which to appeal if he is satisfied with the same. But, there is no provision in the Act empowering the court to enlarge time for this purpose. I have considered the provisions of para 8 of the Schedule to the Courts of Judicature Act 1964, which reads:

> Jurisdiction to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed.

But it is well established that this provision is merely declaratory of the jurisdiction of the High Court to enlarge time prescribed by any written law for doing any act or taking any proceeding always providing there is express provision in the particular written law itself which enables such time to be enlarged. (See *Lee Lee Cheng* v *Seow Peng Kwang*[3] per Rigby J at p 4). Accordingly, as the time limited for appealing has long since expired, it would be an act of supreme futility to give the complainant leave to amend the originating summons by adding the Malaysian Bar as a party. An appeal is, after all, only brought when the originating process is served upon the respondent. (See *Christopher* v *Croll*[4] followed in *Gurbachan Singh* v *Seagrott and Campbell*[5]).

In the result, the preliminary objection succeeds and this appeal must therefore be dismissed with costs.

Appeal dismissed.

Solicitors: *Meena, Thayalan & Partners*; *Rethina & Co.*

Reported by *PS Ranjan*

Syarikat Nam Lee Amang Factory Sdn Bhd v President, Mesyuarat Lembaga Pengurus, Majlis Perbandaraan Ipoh

HIGH COURT (IPOH) – ORIGINATING MOTION NO 2 OF 1985
ABDUL MALEK J
13 APRIL 1989

Local Government – Annual value of property – Valuation – Appeal – Whether valuation correct – Notice of assessment – Mistake in notice as regards lot number of property – Whether a ground for setting aside rate imposed – Local Government Act 1976, ss 141, 144, 146, 158 & 163

Revenue Law – Property – Annual value of property – Valuation – Appeal – Whether valuation correct – Notice of assessment – Mistake in notice as regards lot number of property – Whether a ground for setting aside rate imposed – Local Government Act 1976, ss 141, 144, 146, 158 & 163

The applicant was dissatisfied with the assessment by the municipal authority of the rateable value of the applicant's property under the Local Government Act 1976 and appealed to the High Court against the respondent's decision confirming the assessment. The property was originally part of a lot numbered 36058 which was outside the municipal limits prior to 1983. Some time later, lot 36058 was divided by the authorities into three lots, two of which numbered 72305 and 57785 respectively and comprising about seven acres in area or 58.12% of the original lot, were alienated to the applicant. Eventually, the applicant's property came within the municipal limits with effect from 1 January 1980.

The first notice of assessment was dated 18 November 1982 and it was argued for the applicant that it applied to the whole of lot 36058. Following an appeal, the respondent reduced the value stated in the notice from $35,100 to $26,400 with effect from 1 January 1983. On appeal to the High Court, it was contended for the applicant:

(a) that the said lots and buildings had been valued beyond their rateable value;
(b) that the authorities had erred in their assessment by assessing the property and buildings at a gross annual value of $26,400 without the grounds given by the respondent's valuation officer;
(c) that the basis on which the authorities valued the property was wrong;

(d) that the assessment was arbitrary and unreasonable;
(e) that the decision of the authorities was invalid; and
(f) that the holdings in lot 36058, lot 57785 and lot 72305 which had been jointly valued should have been valued separately.

It was contended for the applicant that the buildings on the lots were actually temporary sheds without permanent structures and that as the adjoining area was a Chinese cemetery and the municipality had provided no infrastructure or services and because of the poor prices of tin ore, the lots were nothing more than unused mining land.

Held, dismissing the appeal:

(1) The valuation officer had stated that his department was aware that the area was more than seven acres in size but his officers had inspected the area and structures thereon before the valuation was made. Following comparison studies of other properties along the same road, the respondent had reduced the annual value after the objections were made by the applicant. Further, it was not disputed that the valuation officer had explained in his affidavits that the most important thing as far as they were concerned was the rental value of the vacant buildings on the applicant's lots if and when let out. They also had evidence that one of the buildings was rented out at $1,000 pm. The contention that the buildings were merely temporary sheds and the contention regarding the downturn in the tin ore industry and the fact that there was no development in the adjoining areas were not sufficient reasons to conclude that the respondent's valuation was not correct. Moreover, there was no valuation undertaken by the applicant to suggest that the valuation undertaken by the respondent was on the high side. The assessment, in the absence of any cogent evidence on the part of the applicant to enable the court to make any other comparison, was fair, proper and reasonable.

(2) The applicant was liable to pay the rates imposed by virtue of being the occupier of the buildings on which rental value the rate was determined and the mistake in the lot number in the notice cannot be a ground for quashing or setting aside the rate imposed on the applicant. This was more so as the buildings bearing the rental value on which the assessment was made were actually on the applicant's portion as an inspection had been undertaken by the respondent before the assessment.

[*Editorial Note*: The applicant has appealed to the Supreme Court vide Civil Appeal No 04-4 of 1989.]

Legislation referred to
Local Government Act 1976 ss 141, 144, 146, 158, 163
Rules of the High Court 1980 O 53

Hira Singh for the applicant.
VS Visvanathan for the respondent.

Cur Adv Vult

Abdul Malek J: The applicant had applied by way of originating motion filed on 5 January 1985 for an order that the decision of the Mesyuarat Jawatan Kuasa Penasihat Mendengar Rayuan (Taksiran) (hereinafter 'Mesyuarat') confirmed by the respondent on 31 October 1984 and communicated to the applicant by letter dated 21 December 1984 assessing the annual value for lot 36058 at $26,400 with effect from 1 January 1983 be set aside or varied with costs on the following grounds:

(a) that the said lots and buildings have been valued beyond its rateable value;
(b) that the Mesyuarat erred in its assessment by assessing the said lot and building at a gross annual value of $26,400 without the grounds given by the respondent's valuation officer;
(c) that the basis on which the Mesyuarat valued the property is wrong;
(d) that the assessment is arbitrary and unreasonable; and
(e) that the decision of the Mesyuarat is invalid.

By consent, para (f) had been added on 28 September 1985 as follows:

(f) that the holdings in lot 36058, lot 57785 and lot 72305 which have been jointly valued should have been valued separately.

Ajaib Singh J (as he then was) on 28 September 1985 had after hearing arguments allowed the appeal with costs but this was reversed by the Supreme Court (Abdul Hamid CJ (Malaya) (as he then was), Azmi SCJ and Abdoolcader SCJ) vide Civil Appeal No 310/85 in Ipoh on 8 July 1986 which also directed that the matter be reheard before another High Court judge. Hence these present proceedings.

In their supporting affidavit, the managing director of the applicant had averred that the lot 36058 was prior to 1983 outside the municipal limits. They were the registered and titled owner of lot 72305 comprising an area of 4 acres 3 rods and 3 poles and lot 57785 which was 2 acres 3 rods in area. These two lots, according to counsel for the applicant, totalled 7 acres 2 rods and 3 poles and in view of the expiry of the mining lease, the Pengarah Tanah dan Galian had decided to divide the now State land into three lots. He added that the two lots stated were alienated to the applicant and that they formed 58.12% of the bigger lot 36058. Counsel went on to argue that the notice 8202658 dated 18 November 1982 (P1 or WFC1 of encl 1) was for the whole of lot 36058. This was also the first assessment notice as prior to this, the municipal boundary did not reach this lot and the state government and the municipality had agreed to enlarge the municipal area covering the said lot just before the notice. The said notice had informed the applicant of the revised valuation list and of their rights under s 144(3) of the Local Government Act 1976 (hereinafter any reference to any section would mean a reference to the said Act). The applicant, being unhappy with the assessment for $5,616, that is, 16% of $35,100, lodged an appeal with the Mesyuarat against the excessive high annual value. At the hearing on 30 May 1984, the Mesyuarat directed the valuation officer of the respondent (hereinafter the 'valuation officer') to supply the grounds of his valuation. The inquiry was then adjourned to 27 June 1984 and during the intervening

period there was an exchange of correspondence between the parties as at WFC2 of encl 1.

At the adjourned sitting, the valuation officer produced the rentals for lots in a different area and as a result of the appeal, the respondent by their letter dated 21 December 1984 (WFC3 at encl 1) reduced the annual value from $35,100 to $26,400 with effect from 1 January 1983. As regards the buildings on the lots, counsel for the applicant submitted that they were actually temporary sheds without permanent structures. As the adjoining area is a Chinese cemetery and the municipality had provided no infrastructures or services and because of the poor prices of tin ore, counsel insisted that the lots were nothing more than unused mining land. The valuation officer in his affidavit at encl 3 dated 9 April 1985 stated that the area was included in the municipal area with effect from 1 January 1980. He was of the view that it was for the applicant as objector to show why the valuation was not correct and this they had failed to do. He went on to state the assessment is based on rental value of the vacant buildings to be let out and not on the basis of the land value. This was followed by further affidavits from both parties as regards the actual rental value of the buildings. As regards the added para (f) to the originating motion, the valuation officer at encl 14 dated 13 November 1986, that is, after the decision on the appeal in the Supreme Court, had clarified that lots 72305 and 57785 formed part of mining land under lot 36058 and when he issued the first notice, he was not aware of the issue of the fresh titles. He had, however, based his valuation on the rental value of the structures on the lots 72305 and 57785 as they stood and not on the market value of the lands. The use of the old lot number, he contended, was never an issue at the objection proceedings and did not affect the rental value. As such, he argued that this mistake as to the lot number should not affect the validity of the notice.

Apart from the oral submissions in open court, both counsel had also put in written submissions and replies and counsel for the applicant had in fact relied also on his written submissions at the earlier hearing. Having carefully considered the arguments, my view was that the first question to be decided was whether the valuation was correct. In his affidavit at encl 7 dated 21 September 1985, the valuation officer had stated that his department was aware that the area was more than seven acres but his officer had inspected the area and structures thereon before the valuation was made. He had also made a comparison with other Amang factories along the said road and had detailed the comparisons in 'K1' attached thereto. It must be emphasized here that these were the figures that led to the respondent reducing the annual value after the objections and did not pertain to the original valuation. The estimated rental per month was given as $2,200 for a total built-up area of 26,624.5 sq ft making it 8.3 sen psf. In fact, only one building with a built-up area of 6,116 sq ft had been rented out at $1,000 pm which amounted to 16.4 sen psf, a sum higher than all the other comparisons. Further, it is not disputed that the valuation officer had explained in his affidavits that the most important thing as far as they were concerned was the rental value of the vacant buildings on the applicant's lots if and when let out. They also had evidence that one of the buildings was rented out at $1,000 pm. Counsel for the applicant had submitted that these buildings were merely temporary sheds and due to the downturn in the tin ore industry and since there was no development in the adjoining areas, the applicant's lots were only unused mining land but this, to the court, were not sufficient reasons to conclude that the respondent's valuation was not correct. Moreover, against these calculations, there is no valuation done by the applicant to suggest that the valuation done by the respondent is on the high side. In the circumstances, the court can find no reason to reject the valuation done by the respondent on the basis of their considerations to reach the reduced rate and holds that the assessment, in the absence of any cogent evidence on the part of the applicant to enable the court to make any other comparison, is fair, proper and reasonable.

The second issue is whether the notice 8202658 dated 18 November 1982 is valid. To decide this question, it is necessary to consider the fact as to whether the applicant was the owner of the land stated on the notice. This point had actually been considered at the earlier hearing, and although this is a rehearing, I am of the view that it is pertinent to reproduce the grounds of judgment given at the last hearing since this point was the only one considered at that stage:

> Grounds of judgment
> I allowed the appeal on the ground that the two lots belonging to the applicant were nowhere mentioned in the relevant notifications as required under the law. It was conceded by the respondent that it was a mistake on the part of the municipality to have included the old mining lease lot No 36058 in the valuation list and not the two lots belonging to the applicant. But it was contended by the respondent that no one was misled by this error and that the applicant knew that its two lots were being valued.
>
> Statutory provisions of the law should be strictly followed. A valuation done on any property must appear on the face of it that it was a valuation done on that particular property and not on some other property. The mining lease over an area of 12 acres plus had expired and two lots of seven acres plus out of the land comprised in the expired mining lease were given to the applicant. The valuation list prepared by the municipality under s 144(1) of the Local Government Act 1976 omitted the two lots belonging to the applicant. The subsequent notice under s 144(2) and further official notifications issued by the municipality to the applicant all have the same expired mining lease lot No 36058 and not the lots belonging to the applicant. Having listed the expired mining lease lot No 36058 in the valuation list the indication for all

to see would appear to be that this lot 36058 comprising the total area of 12 acres plus was valued as one whole piece. There is no indication in the list or in the notices issued by the municipality that either of the two lots belonging to the applicant had been valued. In effect therefore there was no valuation list under s 144(1) and no notice under s 144(2) in so far as the two lots belonging to the applicant were concerned. In the event therefore I allowed the appeal with costs.

Sgd: Justice Dato Ajaib Singh
Judge
High Court
12 November 1985.

Not actually wanting to skirt the issue or avoid the problem, I had again gone through the relevant provisions of the Act and find that I cannot come to the same conclusion. The notice P1 clearly states 'lot 36058' which the respondent concedes is State land which includes the two lots registered in the name of the applicant which only forms 58.12% of the whole area. But what about the validity of the notice? The respondent had conceded that it was a mistake and the first trial judge had decided that it was invalid. Section 146 states that the rates imposed are to be paid by the owners of the holdings but in the case of P1, it has been agreed that the applicant is not the owner of lot 36058. The applicant, it appears therefore, is not actually obliged to pay. It had also been contended that no notice of a valuation list was ever published in the gazette and by way of advertisement in two local newspapers at least one of which is in the national language as required by s 141. Section 144 enables the local authority to correct any mistake on the valuation list but no correction was done as regards the mistake in the lot number in this case. In fact, P1 was a notice under s 144 itself which was meant for amendments to the valuation list and not to a first assessment under s 141.

However, my attention had been drawn to ss 158 and 163 which are reproduced for ease of reference:

158(1) No valuation or rate assessed thereon, no charge or demand of any rate and no attachment or sale shall be impeached or affected by reason of any mistake in –

(a) the name of any person liable to pay the rate;
(b) the description of any holding liable to such rate;
(c) the amount of the rate assessed thereon; or
(d) the mode of attachment or sale,

where the requirements of this Part or of any by-law, rule or regulation are in substance and effect complied with.

(2) No proceedings under this Part for the recovery of any rate shall be quashed or set aside in any Court for want of form.

163(1) In the case of buildings situated on State land or on land reserved for a public purpose and not occupied by the Federal or State Governments the local authority, with the approval of the State Authority, may impose the rates referred to in section 127 upon the annual value or improved value of all or any of such buildings, and the occupiers of such buildings shall be liable to pay the said rates.

(2) The provisions of this Part shall apply to any rate imposed under subsection (1) except that in the application thereof references to a 'holding' shall be deemed to be references to a 'building', and references to the 'owner' of a holding shall be deemed to be references to the 'occupier' of a building.

By the latter, it is clear that in the circumstances of the present case, the applicant is liable to pay the rates imposed by virtue of being the occupier of the buildings on which rental value the rate is determined and by the former, the mistake in the lot number in the notice cannot be a ground for quashing or setting aside the rate imposed on the applicant. This is more so, as stated earlier, where the respondent had explained that despite this mistake, the valuation of the applicant's portion is still correct as the bigger lot 36058 is State land but the buildings on which rental value the assessment is made are actually on the applicant's portion as an inspection had been done by the respondent before the assessment.

At the closing stage of arguments, counsel for the applicant submitted that he was going by way of certiorari and this was strongly objected to by counsel for the respondent. It is obvious from the circumstances that the present application by way of originating motion is an appeal under s 145 and not an application for certiorari since none of the provisions of O 53 of the Rules of the High Court had been complied with and I was of the considered opinion that this submission was an afterthought by counsel for the applicant having realised the limited scope of his arguments towards the end. In the event, based on the court's findings on the two issues raised and ruling that this is an appeal and not an application for certiorari, the appeal is dismissed with costs. On application by counsel for the applicant, I ordered the respondent to return to the applicant the balance of the money deposited with the respondent after deducting the rate due on the notice.

Appeal dismissed.

Solicitors: *Asbir, Hira Singh & Co; Kean Chye & Sivalingam.*

Reported by *PS Ranjan*